

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13443 of the Southland Corporation, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 5102.41 to operate a gasoline service station in addition to the retail sale of groceries, tobacco and patent medicine in a C-2-A District at the premises 740 Kenilworth Avenue, N.E., (Square 5058, Lot 2).

HEARING DATES: February 18, 1981 and June 16, 1982
DECISION DATES: May 6, 1981 and July 7, 1982

INTRODUCTION

The Board in BZA Order No. 13443 dated September 18, 1981, DENIED the subject application. The Board concluded that the applicant had not met the burden of proof in establishing that the proposed use would not create dangerous or other objectionable traffic conditions (Paragraph 5101.412) and that the proposed use will not tend to affect adversely the use of neighboring property (Sub-section 8207.2). The Board found that the testimony of the opposition as to traffic conditions and adverse effect was the exact opposite of that submitted by the applicant. The Board was more persuaded by the testimony of the residents of the neighborhood who, day in and day out, lived with the real situation. The Board noted that this was not some small opposition, but substantial. This was not a few individuals but civic associations and the ANC who are charged with registering the concerns of their constituencies. The applicant sought judicial review of the BZA's decision by the D.C. Court of Appeals, D.C. Appeal No. 81-1217. While the petition for review was pending, the Board filed with the Court a Motion to Remand the case for further proceedings. By Order filed June 8, 1982 the Court ORDERED that the remand of the record to the BZA was extended to July 30, 1982, by which date the record shall be returned to the Court supplemented by the further hearing proceedings. Pursuant to the remand, the Board held a further public hearing on June 16, 1982, limited to the sole issue of the traffic impact of the proposed use on the immediate neighborhood.

FINDINGS OF FACT:

On the basis of the documentary and testimonial evidence adduced at the original public hearing and at the remand hearing, the Board finds as follows:

1. The subject property is located on the northwest corner of the intersection of Kenilworth Avenue and Hayes Street, N.E. and is known as premises 740 Kenilworth Avenue. It is in a C-2-A District.

2. The subject site is rectangular in shape and topographically level. The site measures 23,334 square feet in area. It is improved with a one-story 7-11 grocery store building, with an asphalt surface parking area and driveway. The existing grocery store occupies approximately 2,500 square feet, or about eleven percent of the lot. A Certificate of Occupancy No. B-116870, was issued December 26, 1979 to the store for the retail sale of groceries, tobacco and patent medicine, first floor.

3. The site is a corner lot with 110.1 feet of frontage on Kenilworth Avenue, 110.1 feet at the rear along Kenilworth Terrace and a 212.1 foot length along Hayes Street. The site fronts on the Kenilworth Avenue service road. The 7-11 store is the only structure in this square. The area to the east of the site across Kenilworth Avenue is zoned C-M-1 and developed with Amtrak and Metrorail tracks and Minnesota Avenue. To the southwest is a vacant site, formerly containing the Parkside dwellings, zoned R-5-A. To the west are the Mayfair Garden and Parkside apartments in an R-5-A District. Across Hayes Street to the south is vacant land zoned C-2-B. To the north is vacant property zoned C-2-B and R-5-A. Kenilworth Avenue is a divided expressway running north-south adjacent to train tracks utilized by a railroad and Metrorail. The property is accessible only from southbound Kenilworth Avenue, Hayes Street and Kenilworth Terrace. The Minnesota Avenue Metrorail station is located directly across Kenilworth Avenue. Directly across Hayes Street to the south is a ramp leading to an elevated pedestrian crosswalk which provides access to the Metrorail station.

4. The applicant proposes to continue the convenience food store operation and add a self-service retail gasoline service facility. Two four foot by six foot gasoline pump islands that are six inches above the existing surface and three 12,000 gallon underground gasoline tanks with assorted piping and wiring will be constructed on the portion of the site abutting the Kenilworth Avenue service road. Each island will have one multiple pump displacement unit which is capable of dispensing all products to a location on either side of the pump. If approved, the subject facility would be the only retail gasoline facility for southbound traffic on Kenilworth Avenue in the District of Columbia and westbound traffic on Hayes Street, in the general area. This area includes the Mayfair Gardens and Parkside apartments.

5. Four of the existing twenty-one parking spaces will be removed as a result of the installation of the gasoline pumps. The Zoning Regulations require that a building containing retail establishments located in a C-2-A District having 2,500 square feet of gross floor area shall be provided with two parking spaces. Seventeen parking spaces ten feet by twenty feet or larger will be provided by the applicant. Six of the spaces will be located in front of the 7-11 store. Eleven of the spaces will abut Hayes Street. There are three curb cuts to the site, a thirty-six foot curb cut on Kenilworth Avenue, a forty foot curb cut on Hayes Street and a twenty foot curb cut on Kenilworth Terrace.

6. The gasoline pumps will be modern "state-of-the-art" equipment dispensing "7-Eleven" brand gasoline. The pumps will be controlled by a preset electrical system, the console to which is located and operated inside the store structure by an attendant.

7. The pumps islands will be located to provide a clear line of sight to the pump islands for the store attendant who stands at the control console which is located on the counter inside the store. The location of the pumps provides for a minimum interference with normal store traffic into and out of the site, and allows gasoline customers to park out of the way of other store customers.

8. Each pump island will be lighted with 400 amps from a pole mounted beside the pumps. The lights will be directed down to the general dispensing area and will not cause glare for traffic on either Kenilworth Avenue, Hayes Street or Kenilworth Terrace.

9. All parts of the lot and structure will be separated from all residential districts by a street, Kenilworth Terrace. No portion of any entrance or exit to the subject property will be closer than twenty-five feet to a street intersection as measured from the intersection of the curb lines extended.

10. There will be no grease pits or hoists.

11. No signs will be added to the site other than price signs located on the pumps and other safety labels and instructions.

12. The applicant intends to install decorative landscaping on and around the site, said landscaping to include two red oak trees, two Austrian pine or spruce trees, eighteen American arborvitae bushes, thirty-three Sargent juniper bushes and four hundred thirteen English ivy plants. Landscaping will be added to substantially enhance the visual impact of the site on nearby properties and on

vehicular traffic of local streets. The site is an urban site in poor soils and the areas landscaped were previously subject to extensive foot traffic. The plants chosen are all hardy and should be able to withstand city conditions. The English ivy is particularly difficult to walk through and will encourage pedestrians approaching from the rear to use existing walks and driveways.

13. The applicant's gasoline service manager testified that the current customer count at the Kenilworth Avenue and Hayes Street 7-Eleven is approximately 1,333 per day and that these customers visit the store in approximately 900 to 1,000 vehicles per day. Based on similar situations at other stores, the manager estimated that the subject Kenilworth Avenue and Hayes Street store will attract approximately 200 vehicles per day using the self-service gasoline facility. Of these, fifty percent will be existing customers from the 900-1,000 vehicles per day now entering the lot and fifty percent will be new customers. From these figures, the manager estimated that the total traffic using the site after completion of the gasoline facilities would be 1,000 to 1,100, a number which reflects a ten percent increase in on-site traffic use.

14. Hayes Street, which abuts the site on the south, and Kenilworth Terrace, which abuts the site on the west, are local two-way streets thirty-four feet wide. Parking is prohibited on the south side of Hayes Street at all times. Unrestricted parking is permitted at all times on the north side from the 7-Eleven driveway westward to Kenilworth Terrace. Traffic on Hayes Street moves in one lane in each direction. Unrestricted parking is permitted on both sides of Kenilworth Terrace at all times. Kenilworth Terrace traffic moves in one lane in each direction. Southbound Kenilworth Avenue Service Road is twenty-six feet wide. The Service Road functions as a collector for the adjacent area. Parking is prohibited on the Service Road at all times.

15. There are no traffic signals within the area. Traffic is controlled by stop signs on Kenilworth Terrace at Hayes Street, on Kenilworth Terrace at Burroughs Avenue, and on Hayes Street at the Service Road.

16. During construction of the Kenilworth Avenue bridge over Burroughs Avenue, traffic that previously used the loop ramp from westbound Burroughs Avenue to southbound Kenilworth Avenue was detoured through Kenilworth Terrace and Hayes Street to the Service Road.

17. The applicant's traffic expert testified that he had made three traffic analyses of the subject site, February, 1981, March, 1981 and June 11, 1982. On the basis of the first two studies, he reported that during February and March, 1981, a high percentage of the patronage of the

present store throughout the early morning hours, up to 8:00 A.M., came from southbound Kenilworth Avenue. This was because of the relatively convenient means of entering the southbound Service Road and thence the driveway into the site. During the morning peak traffic hour, from 7:00 A.M. to 8:00 A.M., approximately fifty percent of the vehicles entering the site came from southbound Kenilworth Avenue. The expert anticipated that, based on similar situations at other stores with gasoline service, 200 vehicles per day will use the gas pumps. If eight to ten percent, the ratio of present morning peak hour patrons to the daily patrons, use the gas pumps in the morning peak hour, sixteen to twenty trips will be generated. If one-half of these are new customers, then eight to ten new trips might be added to the adjacent street system. The traffic expert concluded that this additional traffic should have no adverse impact on the system.

18. The traffic expert further testified that as to the proposed development in the nearby area, approximately 112,000 square feet of commercial development, 332 townhouses and 194 apartment units are scheduled for construction on the vacant Mayfair-Parkside site south of Hayes Street. The witness further testified that in a report prepared by BWH-Parkside Associates, Ltd., for the D.C. Department of Housing and Community Development, it is stated that approximately 410 inbound trips and 335 outbound trips will be generated by the development. The report further states, "the traffic generated by the development would not result in traffic demand volumes which would exceed the existing capacity of the roadway system..." The witness concluded that the addition of the gasoline service at the existing 7-11 store will not, in itself, create a traffic generation that would cause adverse traffic impacts on the street system in the immediate vicinity of the site.

19. On the basis of the June, 1982, analysis, the traffic expert testified that the construction of the Kenilworth Avenue-Helen Burroughs Avenue bridge has been completed. The traffic detour for that construction, which was routed through Kenilworth Terrace and Hayes Street, has been removed. Traffic on Kenilworth Terrace and on Hayes Street has dropped to approximately twenty-five percent of that during the operation of the detour. The total number of vehicles entering the site during the entire morning peak period has remained approximately the same. However, during the peak traffic hour, between 7:00 A.M. and 8:00 A.M., the latest count shows a slight increase in the number of vehicles entering the site. The percentage of the total number of vehicles entering the site from the Kenilworth Avenue Service Road has increased approximately one percent, from fifty-six percent to fifty-seven percent. The

percentage of the vehicles entering from Hayes Street has increased from six percent to sixteen percent. The number of vehicles entering from Kenilworth Terrace has decreased from thirty-eight percent to twenty-seven percent.

20. The Kenilworth Avenue bridge structure over Nannie Helen Burroughs Avenue was opened to traffic in June, 1981. At that time the detour which took traffic through the neighborhood by way of Kenilworth Terrace and Hayes Street was removed. The Department of Transportation has not taken traffic counts on the local streets to determine the present volumes. The applicant's traffic consultant made several observations in the area, however, and concluded that traffic has decreased substantially during the morning peak traffic hour, which, because of the detour, had been the period of greatest traffic activity in the neighborhood. These observations were substantiated by a morning peak traffic hour count at the intersection of Hayes Street and the Kenilworth Avenue Service Road. This location was chosen because it is the intersection through which the greatest amount of traffic that moves through the neighborhood passes.

21. New counts of the traffic entering the site during the morning peak period were also taken in June, 1982. Although the total number of vehicles entering the site during the entire morning peak period, that is from 6:15 to 8:00 A.M., has remained the same, the number of vehicles entering during the peak street traffic hour rose from eighty to ninety-two. This could be from a change in commuting habits. The volume of traffic entering from Kenilworth Terrace has decreased. This was true because of the removal of the detour. It can also be noted that there has been an increase in the volume entering from Hayes Street. Observations indicate that this increase represents those vehicles that use the slip ramp from southbound Kenilworth Avenue onto the Service Road and then turn right into Hayes Street. Although this is a potentially hazardous maneuver, the expert observed that there are sufficient gaps in the present Service Road traffic stream to permit the maneuver without service conflict. Future traffic increases on the Service Road will undoubtedly reduce the number and spacing of the gaps and increase the potential hazard at this location. The potential hazardous traffic condition identified in the earlier reports and acknowledged by the Department of Transportation at the intersection of Hayes Street and Kenilworth Avenue Service Road will need to be addressed by the Department of Transportation either during or immediately following the completion of the Parkside Development. Those conditions will in no way be either diminished by the absence of or worsened by the presence of the gasoline service at the existing 7-Eleven store. In summary, the witness testified it is again concluded that, as previously concluded, the addition of the gasoline

service at the existing 7-Eleven store will not, by itself, create any adverse impacts to the adjacent street system. The Board concurs with the findings and conclusions of the traffic expert.

22. The Office of Planning and Development, by report dated February 13, 1981, recommended that the application be approved subject to the applicant's compliance with the condition that any lighting used to illuminate the site shall be arranged that all direct rays of such lighting are confined to the site. The OPD was of the opinion that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect the use of neighboring property, or affect adversely the traffic impact on surrounding streets. The Board concurs in the OPD recommendation.

23. On March 4, 1981, the OPD in response to the Board's request at the public hearing, submitted a supplemental report relating to the proposed Parkside Development. The OPD reported that the Department of Housing and Community Development had advised that the subject site was once occupied by a federally funded housing development, since razed. The preliminary plans for redevelopment of the site show a mixed housing and commercial use of the tract. The proposed pump islands would serve the future residents of the proposed 358 townhouses and 184 apartment units. Included within the developer's scheme are retail, shopping market, hotel, recreation and health facilities. The DHCD reported that the proposed inclusion of protective landscape screening around the 7-11 store and pumps and a safe pedestrian and vehicular circulation system to access and egress the site should adequately protect the adjacent Parkside site, once developed, from visual and traffic oriented impacts.

24. The OPD requested the D.C. Fire Department to comment as to whether the proposed gas station would affect the accessibility of fire trucks and ambulances to the immediate neighborhood of the site because of what appears to be a limited access to sections of the Mayfair Mansions development. The Fire Department, by memorandum dated March 18, 1981, reported that there appeared to be no problem regarding accessibility of emergency apparatus to the neighborhood of the proposed site. The Board so finds.

25. The Department of Transportation, by memorandum dated April 20, 1981, reported that the information supplied by the applicant indicates that the present 7-11 store attracts approximately 1000 vehicles per day. It also projects that 200 vehicles per day will use the proposed gas pumps of which 100 will be new customers. If ten percent of the new customers use the gas pumps in the peak hour, ten new automobile trips will be added to the street system during each of the peak hours. The DOT reported that this

small volume of additional traffic resulting from the addition of the gasoline pumps will not cause a significant impact.

26. The DOT noted that the cumulative effects of a combination of other factors in this area in the future may cause a hazardous traffic condition at the intersection of the Kenilworth Service Road and southbound Kenilworth Avenue off-ramp. However, under the traffic conditions existing at the time of the first DOT analysis, there were no significant adverse impacts on the streets in question, because the Burroughs Avenue bridge detour prevented conflict between southbound Service Road traffic and that of mainline Kenilworth Avenue. Since the detour has been abandoned, and the surrounding streets returned to their former configuration, steps must be taken to minimize the potential conflicts created by additional 200 vehicles destined to and from the Mayfair-Parkside area that could cross and/or merge with approximately 950 vehicles on the Service Road, during the A.M. peak hours. This potential will diminish somewhat during the remainder of the day, but will become crucial again during the P.M. peak period. At the further hearing on June 16, 1982, the DOT testified that its traffic analysis and recommendations remained essentially the same as stated in its memorandum of April 20, 1981. The DOT further testified that, as an interim solution to the potential problems mentioned above, the DOT has started proceedings to change Hayes Street, N.E. from a two-way street to a one-way street southeastbound between Kenilworth Avenue Service Road and Kenilworth Terrace. However, DOT believes that once the Mayfair-Parkside area is completely developed, a more positive solution will be required, such as elimination of the southbound "slip ramp" from Kenilworth Avenue into the Service Road just north of Hayes Street. The Board concurs in the findings and conclusions of the DOT.

27. Advisory Neighborhood Commission 7A by report dated March 17, 1981, objected to the application on the following grounds:

- a. Trucks and vehicles will block the adjoining thoroughfare.
- b. A large volume of traffic and tourmobiles restricts access of residents to use of Kenilworth Terrace, N.E.
- c. The community is residential and the gas pumps will not enhance the surrounding residential area.
- d. Traffic will become congested if gas pumps are installed.

- e. Due to imminent construction on Parkside, a traffic pattern should have been considered for the neighborhood.

28. At the further hearing on June 16, 1982, the ANC testified that in addition to the grounds above stated, it further objected to the granting of the application on the additional grounds that Metro has installed a bus stop on Kenilworth Avenue, N.E. between Jay and Hayes Street, N.E. This stop is located just north of the entrance of the parking lot of the Seven-Eleven. The ANC alleged that the convergence of traffic off the parking lot, traffic south on Kenilworth Avenue, N.E. and traffic off Route 295 at Hayes and/or the Seven-Eleven store would create a monumental traffic problem. The ANC further alleged that numerous near accidents occur daily without the additional problem of gasoline pumps. In support of its conclusions, the ANC testified that it made several traffic counts. On June 18, 1982, between 5:50 A.M. and 6:43 A.M. there were 471 cars travelling south on Kenilworth Avenue, N.E.; that on June 18, 1982, between 9:45 A.M. and 10:45 A.M. there were 200 cars travelling south on Kenilworth Avenue, N.E. off the slip ramp; and there was a Metrobus every fifteen minutes at the bus stop on the entrance of the parking lot of the Seven-Eleven and, that on June 17, 1982, between 7:45 A.M. and 8:30 A.M., there were 162 cars travelling on the slip ramp onto the Kenilworth Avenue access road.

29. At the public hearing of February 18, 1981, the Mayfair Mansions Resident Council, the Eastland Gardens Civic Association, the Sixth District Police Citizens Advisory Board, the neighboring ANC-7D, Councilman H.R. Crawford and individual residents of the immediate area opposed the application. A petition of residents in the immediate area in opposition was also submitted to the record. The basic objections were focused on traffic impact and the residential character of the neighborhood. The opponents testified that the proposed pumps will bring vehicular traffic and congestion to a residential neighborhood. The opponents argued that the 7-11 store is a neighborhood store and is patronized to a great extent by pedestrians and that the increased traffic would jeopardize the safety of the pedestrian residents. The opponents alleged that since the pumps would be the only service facility for southbound traffic on Kenilworth Avenue and westbound on Hayes Street within miles it will invite extra traffic which will impede the traffic circulation in the neighborhood. The neighborhood has many senior and retired citizens and the extra traffic will impede fire and ambulance services. The opposition argued that the OPD did not consider what further traffic impact will be engendered by the Parkside development, that there had been no opportunity for community input or involvement in the proposal, that the pumps will be located on property

adjacent to two major areas zoned residential and that direct access to the pumps will be from two residential streets. There were sufficient gas facilities in the area. The opponents further testified that the majority of the neighborhood citizens, citizens groups and organizations were opposed to the application.

30. The Board is required by statute to give great weight to the written issues and concerns of the ANC. In addressing these issues and concerns as well as those of the other opponents, the Board finds that the applicant is seeking a special exception. The applicant's burden of proof is that its evidence must meet the requirements of that section of the Zoning Regulations under which it seeks relief from the Board. The subject site is zoned commercial, not residential, and the proposed use may be permitted if approved by the Board. The Board cannot deny relief because the proposed use may not be popular in a community. The Board cannot deny relief when it is assured by the D.C. Government that there will be no impediments for proper fire and ambulance service. The main issue before the Board is that of traffic impact. The Board finds that the traffic count submitted by the ANC are not materially different from those submitted by the applicant's traffic expert. The Board finds that, based on Findings Nos. 17, 18, 19, 20, 21, 22, 23, 24 25 and 26, the issue of adverse traffic impact has been sufficiently addressed by the applicant's expert witness and the DOT.

CONCLUSIONS OF LAW AND OPINION:

Based on the entire record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof that the applicant has complied with the requirements of Paragraphs 5102.41, and Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has met its burden of proof. The sale of gasoline as proposed meets the applicable standards of Article 74. The station is not located within twenty-five feet of a residence district. In concluding that the proposed use will not create dangerous or other objectionable traffic conditions and that the proposed use will not tend to affect adversely the use of neighboring property, the Board notes the expertise of the applicant's traffic witness and the reports of the Office of Planning and Development and Department of Transportation as to the traffic impact on the immediate neighborhood from the proposed use. The Board concludes that such evidence is persuasive while the evidence of the opposition is not. The opposition presented no probative evidence to support its contentions that the use would be dangerous or objectionable because of traffic. All that was proffered were unsupported assertions.

The Board concludes that it has offered the "great weight" required by statute to the issues and concerns of the ANC.

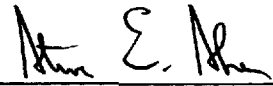
It is therefore ORDERED that the BZA Order No. 13443, dated September 18, 1981 is VACATED, and it is further ORDERED that this application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval of the application shall be limited to the sale of gasoline. There shall be no repair of vehicles, changing of oil, or the servicing of vehicles permitted on the site. The applicant shall post notices to that effect on the front and side of the building.
2. Grass shall be planted on the area shown in white and not designated as concrete walks on Exhibit No. 55 of the record.
3. The curbing and landscaping proposed for the southern, corner of the site shall be extended to include the area marked with diagonal lines on Exhibit No. 55 of the record and located twelve feet from the proposed gasoline pumps.

VOTE: 4-0 (William F. McIntosh, Connie Fortune, Douglas J. Patton and Walter B. Lewis to RESCIND and GRANT; Charles R. Norris ABSTAINED).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUL 28 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.